



PORTCULLIS TRUSTNET

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REGISTRATION OF CHARGE IN BRITISH VIRGIN ISLANDS

Since the British Virgin Islands (“BVI”) Business Companies Act (as amended) 2004 (“BCA”) came into force, there seems to be a substantial amount of confusion among BVI companies as to the preparation of charges to be registered, and the requirements for filing the charges in the BVI. We therefore would like to take some time to clarify the statutory requirements for Register of Charges.

Please note that these requirements are intended for companies to which we provide registered agent services. Other registered agent service providers requirements may differ.

Law & Requirements

The BCA requires that every charge created by a company must be placed in a Register of Charges maintained by the company. **Each charge is treated individually no matter how many charges a company may have created with the same chargee and on the same day.** Although the BCA does not make the filing of charges with the Registrar of Corporate Affairs (the “Registrar”) mandatory, registration of charges is important to the priority of charges created by a company.

Regardless of whether the charge is being filed with the Registrar or simply being placed on the company’s Register of Charge, Portcullis TrustNet (PTN) will comply with the following requirements as imposed by the BCA. These requirements are as follows:-

Creating the Charge

The BCA requires that every charge on the Register of Charges whether filed or not, contain the following minimum information:

- Date of creation of the charge;
- Description of the liability secured;
- Description of the property charged;

Please note that the information contained herein is not intended to be exhaustive with respect all issues or matters arising directly or indirectly out of registration of charges pursuant to the British Virgin Islands Business Companies Act 2004. It is provided as a general guide or reference point and is in no way intended and should not be relied upon as legal advice.



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- Name and address of the chargee or trustee of security;
- Name and address of the holder of the charge; and
- Details of any prohibition of restriction, if any, contained in the document creating the charge on the company on the power to create any charge ranking in priority to or equal to the charge.

There is no specific format for the form of Register of Charge created by the company as long as all the above information is contained therein.

In cases where PTN prepares the charges, PTN will include an additional column for "Description of the Document Creating the Charge". It is our experience that this practice has facilitated the quick registration of charges particularly where more than one liability is secured or more than one property is charged by a single document. Though this practice is not compulsory we advise clients to include the same on charges that they create as it will speed up the registration process.

Filing a Charge

When a company decides to file a charge with the Registrar there are two important factors to consider:

1. **Each Charge must be filed separately**

Each charge **MUST** be filed separately irrespective of whether the chargee is the same or the charges were created on the same day or at the same time or in relation to the same liability. If there is more than one charge document executed, it will be considered that there is more than one charge.

The BCA states that where a company creates a **relevant charge** an application may be made to the Registrar to file the same. The BCA is specific that where **a relevant** is filed and it is interpreted to mean that each charge will be filed separately. **It is very important to note therefore that any attempt to file more than one charge as a single charge will result in a defective notice from the Registrar and therefore delays in completing registration will result.** Every charge is a separate entry both on the company's register at its registered office and if filed, at the Registry.

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2. **Instructions to create and file charges**

The instructions to create and file a charge against the property of the company must come from the company and not the client of record.

Although we are aware that every charge created by the company must be placed on the company's register as registered agent we cannot act solely on the instructions of our clients to create a charge for the Register of Charge or to file the same with the Registrar. The principal reason being that the client does not control or manage the company. The BCA like the previous acts before it are clear that the business and affairs of the company shall be managed by the directors or under their supervision. Therefore **any instructions to create any obligations against the company or its assets or file any such obligation with the Registrar must come from the company directors by directors' resolutions.**

This ensures that activities of the company are properly recorded and that the activities are being managed by the company directors. Any act not approved by the directors of the company and carried out by the registered agent or any other party could expose that party to claims of fraud.

Summary

The following should always be remembered in respect of all charges to be created and/or filed by PTN for companies for which it acts as registered agent:

1. Directors resolutions must be provided;
2. Each charge is treated separately both for the company's records and for filing;
3. The minimum required information of each charge as detailed above must be contained in the Register of Charges; and
4. The procedure as outlined does not charge if the charge is to be filed with the Registrar or not.

***To find out more about this and other new developments,
contact your Relationship Manager today!***

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